

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 40

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAZUHIRO SATO

Appeal No. 2000-0427
Application No. 08/773,173

HEARD: Feb. 20, 2002

Before LALL, DIXON, and BARRY Administrative Patent Judges.

LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1, 5, 7, 10, 16, 18, 27-35, and 39-45, all the pending claims in the application.

The disclosed invention relates to a remote commander (Figure 3 of disclosure) for wirelessly transmitting a first command signal in accordance with a user operation, the first command signal being a single transmission, and a control means

including a receiving unit for receiving said first command signal at a first infrared carrier frequency transmitted directly to said control means and a transmitting unit connected to said control means for wirelessly transmitting a second command signal, directly to a selected appliance, at the same time said first command signal is transmitted, said second command signal having a second infrared carrier frequency, different than said first infrared carrier frequency, said second command signal controlling operation of said selected appliance in response to said user operation, wherein said first and second command signals do not interfere with each other even though wirelessly transmitted through an operational range of common space in the vicinity of said selected appliance. The appliances can include for example a VTR, a TV tuner, or, an air conditioner. A further understanding of the invention can be obtained from the following claim.

1. A remote control system comprising:

a remote commander for wirelessly transmitting a first command signal in accordance with a user operation, the first command signal being a single transmission having a first infrared carrier frequency;

control means including a receiving unit for receiving said first command signal at said first infrared carrier frequency transmitted directly to said control means as said single transmission from said remote commander; and

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a transmitting unit, connected to said control means, for wirelessly transmitting a second command signal, directly to a selected appliance, at the same time said first command signal is transmitted, said second command signal having a second infrared carrier frequency, different than said first infrared carrier frequency, said second command signal controlling operation of said selected appliance in response to said user operation;

wherein said first and second command signals do not interfere with each other even though wirelessly transmitted through an operational range of common space in the vicinity of said selected appliance.

The examiner relies on the following references:

Rumbolt et al. (Rumbolt)	4,703,359	Oct. 27, 1987
Seymour et al. (Seymour)	4,709,412	Nov. 24, 1987
Schepers et al. (Schepers)	4,965,557	Oct. 23, 1990
Dockery	5,142,397	Aug. 25, 1992
Emmons	5,243,430	Sep. 7, 1993
Ikezaki	5,367,316	Nov. 22, 1994
	(effective filing date Mar. 27, 1990)	
Kohar et al. (Kohar)	5,554,979	Sep. 10, 1996
	(effective filing date Feb. 24, 1992)	

Admitted Prior Art.

Claims 1, 5, 7, 16, 39, and 41-42 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dockery in view of the admitted prior art.

Claim 10 stands rejected under 35 U.S.C. § 103 as being unpatentable over Dockery in view of the admitted prior art and Schepers.

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Claims 18, and 27-29 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dockery in view of the admitted prior art and Emmons.

Claims 30-33 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dockery in view of the admitted prior art and Seymour.

Claims 34 and 35 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dockery in view of the admitted prior art and Ikezaki.

Claim 40 stands rejected under 35 U.S.C. § 103 as being unpatentable over Dockery in view of the admitted prior art and Kohar.

Claims 43-45 stand rejected under 35 U.S.C. § 103 over Dockery in view of the admitted prior art and Rumbolt.

Rather than repeat the arguments of appellant and the examiner, we make reference to the briefs¹ and the answer for the respective details thereof.

¹ A reply brief was filed as Paper No. 36 on July 9, 1999. The examiner noted the entry of the reply brief, see Paper No. 37.

OPINION

We have considered the rejections advanced by the examiner and the supporting arguments. We have, likewise, reviewed the appellant's arguments set forth in the briefs.

We affirm-in-part.

In an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to the Applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

We are further guided by the precedent of our reviewing court that the limitations from the disclosure are not to be imported into the claims. In re Lundberg, 244 F.2d 543, 548, 113 USPQ 530, 534 (CCPA 1957); In re Queener, 796 F.2d 461, 463-64, 230 USPQ 438, 440 (Fed. Cir. 1986). We also note that the

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arguments not made separately for any individual claim or claims are considered waived. See 37 CFR § 1.192 (a) and (c). In re Baxter Travenol Labs., 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991) ("It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art."); In re Wiechert, 370 F.2d 927, 936, 152 USPQ 247, 254 (CCPA 1967) ("This court has uniformly followed the sound rule that an issue raised below which is not argued in that court, even if it has been properly brought here by a reason of appeal, is regarded as abandoned and will not be considered. It is our function as a court to decide disputed issues, not to create them.").

At the outset, we note the grouping elected by appellant (see brief at pages 10 and 11):

Group I: claims 1, 7, 10, 30-35 and 40-45.

Group II: claims 5, 16, and 39.

Group III: claims 18, and 27-29.

We note that there are many combinations of the different references used by the examiner to reject the various claims, however, we will analyze the claims according to the grouping above.

Group I

We take claim 1, as representative, for the analysis of this group. In response to the obviousness rejection of claim 1 (answer at pages 3-5), appellant argues (brief at pages 11-14) that, contrary to the examiner's assertion, element 38 of Dockery is not a selected appliance as claimed. Rather, appellant argues, id. at page 13, that "Dockery specifically distinguishes its autonomous second repeater 38 from a controlled device 10 or 12. . . . Accordingly, the second repeater 38 can not be considered the selected appliance that is controlled by a second command signal as claimed in claim 1." We agree with appellant's observation regarding the repeater 38 and controlled appliances 10 and 12 of Dockery. However, appellant is charged with the complete disclosure of an applied reference, as has been established that "[a]ll of the disclosures in a reference must be evaluated for what they fairly teach one of ordinary skill in the art.'" In re Lemelson, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968) (quoting In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966)). We find that it is clear from Figure 1 and the associated text (column 2, line 66 through column 3, line 57) that the controlled devices are 10 and 12, which represent a variety of devices to be selectively controlled by the controller

in Dockery. In our deliberations, controller 20 in Figure 1 of Dockery is considered as the claimed remote commander and repeaters 24 and 38 together are considered as the claimed controller, and 10 and 12 are the selected controlled devices. The remote commander 20 sends an infrared signal as a wireless signal to the receiver 26 in the controller, which in turn sends a wireless signal (infrared signal) from the transmitter 42 directed to the selected appliances 10 and 12. Dockery does not explicitly state that commander 20 transmits a signal at a different frequency than transmitter 42 transmits its signal to the receivers 14 and 16 of the selected appliances 10 and 12. The examiner relies on the admitted prior art that is well known in the art to have these signals be transmitted at different frequencies. We note that appellant has not questioned the transmission of the signals at different frequencies in the briefs. Rather, appellant attacks the Dockery reference and the admitted prior art individually, and not as a combination. Thus, appellant states, brief at page 14, that "none of the prior art cited by the Examiner provides each and every limitation claimed in claim 1." At the hearing, appellant's representative stated that Dockery's device is designed to operate in locations remote from the appliances, and that, if used in the vicinity of the

appliances, there would be an interference in the two wireless signals. However, we are of the opinion that whereas Dockery is directed to extending the range of the remote commander 20 to farther locations from the controlled devices, it does not preclude that the same device could be modified to operate in the vicinity of the appliances. We are further of the view that an artisan would have found it obvious to transmit the infrared signal from commander 20 at a frequency different from the transmitter signal from transmitter 42 so that the two signals do not interfere with each other and hence rendering the controller useless. Therefore, we sustain the obviousness rejection of claim 1 over Dockery in view of the admitted prior art. Whereas we have applied the references slightly different from the examiner's characterization of the elements in Figure 1 of Dockery, we are still relying on the same references as the examiner. Therefore, we are of the opinion that this does not constitute a new ground of rejection. In re Bush, 296 F.2d 491, 496, 131 USPQ 263, 266-267 (CCPA 1961).

Even though appellant selected these claims as part of Group I, appellant makes a reference to claim 10 with respect to Schepers as addition to the combination; claims 30-33 with respect to Seymour as addition to the combination; and addition

of Ikezaki with respect to claim 34 and 35; and Kohar with respect to claim 40; and Rumbolt with respect to claims 43-45 at pages 14 and 15 of the brief. However, these references to various applied prior art references are not in accordance with 37 CFR § 1.192 (c) (8) (iv) (1998), which requires that appellant must specifically address the differences in each claim with respect to the claimed elements and must show how they differ from the elements in the applied references. Appellant has not fulfilled this requirement. Therefore, the obviousness rejection of claims 1, 7, 10, 30-35, and 40-45 over Dockery and various combinations of the references is sustained.

Group II

We take independent claim 16 as representative of this group. The examiner rejects claim 16 over Dockery in view of the admitted prior art, answer at page 11. Appellant (brief at pages 16 and 17) argues that the selecting apparatus claimed in claim 16, starting with line 18 and ending with line 26, is not at all shown by Dockery. In fact, the examiner asserts, answer at page 11, that "[n]ote that the scope of claims 16, 39, and 5 echoes the scope of claim 1." We disagree with the examiner's position. Claim 16 does have an additional feature. Therefore, the examiner has not made a prima facie case of obviousness for the

rejection of claim 16. Consequently, we do not sustain the rejection of claim 16 and its dependent claims 5 and 39 over Dockery in view of the admitted prior art.

Group III

In response to the rejection of this group, claims 18 and 27-29 (answer at pages 6 and 7), appellant argues, after discussing Emmons beyond the earlier discussion of Dockery and the admitted prior art, brief at page 16, that "[n]either Emmons nor Dockery are directed toward the object of controlling multiple appliances." We disagree. As stated above, Dockery is indeed directed to controlling multiple devices such as 10 and 12 in Figure 1. The examiner did not rely on Emmons for the teaching of controlling multiple appliances. The examiner employed Emmons for the proposition of transmitting different sets of command signals along mutually different directions, and not for curing the deficiency of Dockery as perceived by appellant. Appellant has not argued the combination of Emmons and Dockery. Instead, appellant has relied on the argument that Dockery does not show the claimed remote control and the controller as claimed and that Emmons does not cure this deficiency. No other arguments are presented. Therefore, we

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sustain the obviousness rejection of claims 18 and 27-29 over Dockery in view of the admitted prior art and Emmons.

In summary, we have sustained under 35 U.S.C. § 103 the rejection of claims 1, 7, 10, 18, 27-35, and 40-45, while we have not sustained the rejection of claims 5, 16, and 39.

Accordingly, the decision of the examiner under 35 U.S.C. § 103 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

Parshotam S. Lall)	
Administrative Patent Judge)	
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Joseph L. Dixon)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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